

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

John Anthony Capers,)	
Petitioner,)	
)	C.A. No. 2:05-2143-DCN
vs.)	Crim. No. 2:92-0446-DCN
)	<u>ORDER</u>
United States of America,)	
Respondent.)	
_____)	

Petitioner John Anthony Capers(“Capers”) has filed A Motion Requesting A Certificate of Appealability. 28 U.S.C. § 2253(c)(1) provides that an appeal of a decision on a habeas corpus petition filed under 28 U.S.C. § 2254 or a motion under 28 U.S.C. § 2255 may not be taken “unless a circuit justice or judge issues a certificate of appealability.”

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this burden an applicant must show that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).¹

Here, the court has previously concluded that Capers’ claims are without merit. Capers has raised no new arguments which cause this court to view the issues as debatable, conclude that the issues could have been resolved differently, or find that the issues raise questions which warrant further review. For the reasons stated in the December 21, 2005 order, this court finds

¹When the denial of relief is based upon procedural grounds, a certificate of appealability should issue if “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 485.

that Petitioner has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253.

It is therefore **ORDERED**, for the foregoing reasons, that Capers’ Motion Requesting Certificate of Appealability is hereby **DENIED**.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
February 7, 2006